

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

QUALITY PRODUCTS, INC.,

Plaintiff,

v.

SONA FOODS, INC., et al.,

Defendants.

Case No. 18-cv-07073-VC

**ORDER GRANTING MOTION TO
DISMISS COUNTERCLAIM**

Re: Dkt. No. 37

The motion to dismiss the counterclaim is granted with leave to amend. As alleged, SONA's counterclaim for tortious interference with business relations is based on communications – a letter, phone calls, and in-person visits – that are covered by the litigation privilege. *See* Cal. Civ. Code § 47(b).¹ The communications were made during the pendency of a lawsuit between Quality Products and SONA's supplier, Verka Food International. *See generally Quality Products, Inc. v. Verka Food Products Ltd.*, No. 2:17-cv-01418-MJP (W.D. Wash. Sept. 20, 2017). The communications informed retailers that the lawsuit involved products that they sold and requested information about the sales. *Cf. Weiland Sliding Doors & Windows, Inc. v. Panda Windows & Doors, LLC*, 814 F. Supp. 2d 1033, 1040-41 (S.D. Cal. 2011); *eCash Techs., Inc. v. Guagliardo*, 127 F. Supp. 2d 1069, 1082 (C.D. Cal. 2000). The retailers have a significant interest in that dispute because they could potentially be liable for selling infringing products, and at the very least their inventory could be affected. *Cf. Weiland*, 814 F. Supp. 2d at 1040-41; *Sharper Image Corp. v. Target Corp.*, 425 F. Supp. 2d 1056, 1079 (N.D. Cal. 2006); *eCash*, 127 F. Supp. 2d at 1082; *Abraham v. Lancaster Community Hospital*, 217 Cal. App. 3d

¹ The request for judicial notice filed by Quality Products is denied because the documents were not necessary to decide the motion to dismiss.

796, 823 (Cal. Ct. App. 1990). And the privilege applies regardless of whether the communications were made with malice. *See Silberg v. Anderson*, 50 Cal. 3d 205, 216 (1990).

Although it seems unlikely that an amended counterclaim could survive a renewed motion to dismiss based on the litigation privilege, SONA will be given leave to amend in an abundance of caution. Any amended counterclaim must be filed within 21 days of this order.

IT IS SO ORDERED.

Dated: May 3, 2019



VINCE CHHABRIA
United States District Judge